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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,047	09/29/2003	John A. Kapeles	A0693.10U	2575
7590	05/18/2005		EXAMINER	
Thomas C. Saitta Rogers Towers, P.A. Suite 1500 1301 Riverplace Boulevard Jacksonville, FL 32207			LOFDAHL, JORDAN M	
			ART UNIT	PAPER NUMBER
			3644	
DATE MAILED: 05/18/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/674,047

Applicant(s)

KAPELES ET AL.

Examiner

Jordan Lofdahl

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 07 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-16 and 18-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-16 and 18-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments with respect to all the pending claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Drawings***

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "20" has been used to designate both projectile body and projectile base. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claims 7-9, 13, 20, 21, 25 and 26 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 7 and 20 recites the limitation "said cylindrical wall" and "said forward wall". There is insufficient antecedent basis for this limitation in the claim.

Claims 8 and 21 recites the limitation "said payload". There is insufficient antecedent basis for this limitation in the claim.

Claim 9 recites the limitation "said projectile base". There is insufficient antecedent basis for this limitation in the claim.

Claims 9, 25 and 26 recites the limitation "said projectile base". There is insufficient antecedent basis for this limitation in the claim.

As to claims 13 and 26, "a cylindrical wall" and "a forward wall" is confusing as whether they define all in addition to the walls of claim 7.

***Claim Rejections - 35 USC § 102***

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 5-15, 18-22, 24-28, 30 and 31 are rejected under 35 U.S.C. 102(e) as being anticipated by Klein (2004/0069177).

As to claim 1, Klein discloses a projectile nose (20 and 71) joined to a projectile base (15); said projectile nose comprising a cavity (the area filled by the material 28, fig. 2); and said projectile nose composed of a frangible, rigid, polymer foam material (styrofoam).

As to claims 2, 15 and 28, disclosed is the nose having a rounded forward wall and cylindrical wall (71, fig. 1), said cylindrical wall being thinner than the forward wall (20; fig. 2).

As to claim 5, disclosed is a payload (28 and 30) in the cavity.

As to claims 6, 8, 19, 21 and 30, disclosed is a marker (30).

As to claims 7, 20 and 31, disclosed is a rear plug (75) wall joined to said cylindrical wall (71), the combination of the forward (rear part of 20), cylindrical wall (20) and the plug defining said nose cavity (fig. 2).

As to claim 9, disclosed is the plug joined to the projectile base (15).

As to claims 11, 12, 24 and 25, disclosed is a forward wall (41) and a cylindrical wall (16).

As to claims 13 and 26, disclosed is a forward wall and a cylindrical wall (71) an the rear plug is joined to said forward wall of said projectile base.

As to claim 14, disclosed is a projectile nose (18) and a projectile body (15) separably joined to a shell (12) comprising a propulsion means (80); said projectile nose comprising a cavity (fig. 2) and composed of a frangible, rigid, polymer foam material (styrofoam) which is capable of being crushed upon impact and inherently absorbs and dissipates energy on impact [0050].

As to claim 18, disclosed is a payload (28 and 30) in the cavity and capable of dispersing laterally.

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As to claim 22, disclosed is the plug joined to the projectile base (15).

As to claim 27, disclosed is a projectile nose (18) and a projectile body (15) separably joined to a shell (12) comprising a propulsion means (80); said projectile nose comprising a cavity (fig. 2) and composed of a frangible, rigid, polymer foam material (styrofoam) which is capable of being crushed upon impact and inherently absorbs and dissipates energy on impact [0050] and a payload (28 and 30) in the cavity and capable of dispersing laterally and inherently dissipating energy.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 3, 10, 16, 23 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klein (2004/0069177) further in view of Royer (3732821)

As to claims 3, 16 and 29, not disclosed is the foam material having a density between approximately 8 and 14 pounds per cubic foot. Royer, however, discloses a foam having a density between approximately 8 and 14 pounds per cubic foot (col. 3, lines 22-24). It would have been obvious to one having ordinary skill in the art at the time the invention was made to comprise the foam of Klein with the density ranges as taught by Royer to ensure the non-lethal properties of the projectile.

As to claims 10 and 23, not disclosed is the foam comprised of polyurethane. Royer, however, discloses a polyurethane foam (col. 3, lines 22-24). It would have been obvious to one having ordinary skill in the art at the time the invention was made to comprise the foam of Klein with the polyurethane material as taught by Royer to ensure the non-lethal properties of the projectile.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.



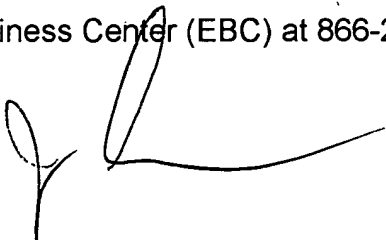
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jordan Lofdahl whose telephone number is 571.272.6904. The examiner can normally be reached on m-f 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harvey Behrend can be reached on 571.272.6871. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jml



MICHAEL J. CANOSE  
SUPERVISORY PATENT EXAMINER